Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of	)	
	)	
Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications	)	GN Docket No. 94-90

To: The Commission

OPPOSITION TO REQUEST FOR PARTIAL RECONSIDERATION

The Small Cellular Carrier Coalition ("SCCC"), by its attorney, and pursuant to Section 1.429 of the Federal Communications Commission's ("FCC" or "Commission") Rules and Regulations, hereby responds to the Request for Partial Reconsideration and for Clarification ("Request") filed by the American Mobile Telecommunications Association, Inc. ("AMTA") on April 24, 1995 in response to the Commission's Report and Order released March 7, 1995 (Report & Order) in the above-captioned proceeding.

I. STATEMENT OF INTEREST

SCCC is a coalition comprised of small cellular operators providing service to rural America.[1] SCCC's members serve over

[1] SCCC member companies include: Cellular Mobile Systems of St. Cloud, CT Cube, Inc., CKGCK&H No. 2 Cellular Limited Partnership, ENMR Telephone Cooperative, Inc., Etex Cellular Company, Texas RSA No. 3 Limited Partnership, New Mexico 4 East RSA Partnersip, New Mexico 6-II Partnership, Mid-Tex Cellular, LTD, Leaco Rural Telephone Cooperative, Inc., RSA 11 Limited Partnership, Rural Cellular Corporation, Georgia Independent RSA Nos. 7 and 10 Cellular Partnership and Texas RSA 15B2 Limited Partnership.

thirty licensed areas across the country encompassing approximately 3 million people. In its Request, AMTA seeks to have the Commission reverse its decision to allow cellular carriers to offer dispatch services. Additionally, AMTA recommends that the Commission auction off unused cellular spectrum to the highest bidder. SCCC member companies will be affected adversely by a modification to the Commission's Report & Order as advocated in AMTA's request. Accordingly, SCCC has a vested interest in the outcome of this proceeding.

II. DISCUSSION

A. The Record in this Proceeding Supports the Commission's Determination That Elimination of the Wireless Dispatch Ban is Necessary to Achieve Regulatory Parity.

The basis for AMTA's request that the wireless dispatch prohibition be retained is its contention that the Commission erred in its determination that elimination of the prohibition is necessary in order to achieve the regulatory parity mandated by Congress. AMTA claims that regulatory symmetry already exists because Part 22 licensees are permitted to offer dispatch communications on Part 90 frequencies. Such a claim evidences a curious understanding of the concept of regulatory parity. Specialized Mobile Radio ("SMR") licensees are currently permitted to provide both dispatch and commercial mobile radio service ("CMRS") over the same licensed Part 90 facilities. The ability of Part 22 licensees to provide dispatch service over different frequencies from those on which they are already licensed is by no

means equivalent to the regulatory flexibility afforded their SMR counterparts. The ability to provide CMRS and dispatch service over the same licensed frequencies is both spectrally and economically more efficient than providing such services over different frequencies. Moreover, an entity that can offer a variety of services over the same frequencies will have a competitive advantage over an entity that is prohibited from doing so.[2] To allow SMRs to achieve such efficiencies and competitive benefits, while leaving regulatory obstacles to Part 22 licensees in place clearly contravenes the congressionally mandated notion of regulatory parity. The FCC was entirely correct in concluding that a repeal of the dispatch ban is necessary in order to achieve such parity.

Contrary to AMTA's contentions, the record in this proceeding fully supports the FCC's decision to repeal the ban. AMTA claims that there is no record evidence supporting the Commission's conclusion that "elimination of the dispatch prohibition will benefit rural communities by facilitating competition in underserved areas and will allow some rural subscribers to obtain low-cost dispatch service from a third-party provider for the first time." Report and Order at paragraph 30. To the contrary, Comments filed by the Rural Cellular Association make clear that

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[2] AMTA does not dispute the FCC's conclusion that "[e]limination of the dispatch prohibition will help to equalize the regulatory requirements applicable to all mobile service providers by allowing competing operators to offer the same portfolio of service options and packages." Report and Order at paragraph 34.

larger telephone companies have chosen not to provide telephone service to less profitable rural areas and, as a result of the then legal inability of a wireline telephone company to provide dispatch services using Part 90 frequencies and the legal inability for rural cellular carriers to provide dispatch service over their Part 22 facilities, such services are not available in many rural areas. Comments of Rural Cellular Association at pp. 2-3.

AMTA provides no factual support for its statement that "there are third-party community repeater, private carrier and SMR systems in virtually every hamlet in the country." Request at p. 6. Such a claim is pure hyperbole and is flatly contradicted by an examination of the Commission's licensing records. AMTA also questions whether a rural cellular operator will provide service to areas which today are totally devoid of dispatch options. Members of the Coalition explicitly affirm their intent to provide dispatch service to such areas. In addition, the Comments of the Rural Cellular Association in support of the lifting of the dispatch ban clearly suggest a commitment to serving such areas. Indeed, as stated in the Rural Cellular Association's Comments, the entire history of the rural telephone industry evidences a commitment to serving remote rural areas that the larger telephone companies consider economically undesirable.

B. Currently Unused Cellular Spectrum Should Not Be Carved Out of Cellular Radio Licenses.

For the first time in this proceeding, AMTA makes the novel suggestion that spectrum which is not needed to provide a cellular service should be recovered by the Commission and auctioned off to the highest bidder. Id. In other words, if a cellular carrier wishes to utilize some of its spectrum to satisfy public demand for dispatch service, it will be required to compete for the opportunity to pay for the right to provide such service. This approach would thus penalize a cellular carrier for attempting to respond to marketplace demand. AMTA's suggestion would result in many cellular carriers being dissuaded from providing dispatch service, thus denying the public the benefits of competition. Moreover, a cellular carrier wishing to provide dispatch service to an isolated rural community would be required to pay for the right to serve a much larger Basic Trading Area. Faced with a significant economic disincentive to participate in such an auction, the carrier would be unlikely to seek to obtain the right to serve that larger area, thus preventing the community in question from receiving third-party dispatch service.

AMTA's proposal also ignores the technical and economic realities of cellular radio service. While AMTA correctly recognizes the general benefits of spectrum efficiency, it utterly fails to understand the technical constraints on cellular carriers which mandate the temporary set aside of certain authorized frequencies. Due to coordination of frequency use among cellular carriers in adjacent markets, certain frequencies cannot be used in

order to avoid interference. Accordingly, frequency use among adjacent cellular licensees requires constant coordination and readjustment to accommodate growth, thereby creating interdependence. Changes in the frequencies utilized in markets hundreds of miles away could cause a chain reaction which results in a need to use different frequencies within 75 miles of either side of market borders.[3]

In addition, due to the incredible growth the cellular industry is experiencing, frequencies that are unused today will be used to accomodate expansion in the near future. Cellular subscriber growth remains on a steep upward curve.[4] Cellular systems are constructed in anticipation of such growth. To mandate a recovery of temporarily unused celullar frequencies, as AMTA suggests, is to ignore marketplace reality, and the public interest would unquestionably be disserved by the adoption of such a proposal.[5]

C. Elimination of the Dispatch Prohibition Should Not Be Delayed.

AMTA requests that the Commission defer the effective date of the elimination of the dispatch ban until August 10, 1996. It

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[3] See 47 C.F.R. §22.907.

[4] According to the Cellular Telecommunications Industry Association, 28,000 new subscribers sign up for cellular service each day. Washington Post, May 20, 1995, at A2.

[5] Moreover, such a rule change is well beyond the scope of this proceeding. The Commission may not adopt such a change without commencing a full notice and comment rulemaking proceeding on the issue.

claims that such a delay is consistent with the Commission's desire for regulatory symmetry. To the contrary, as discussed in Section A above, any delay in allowing Part 22 licensees to provide dispatch service is a delay in achieving regulatory parity. Only AMTA and its members will benefit from a delay in achieving regulatory parity. The August 10, 1996 transition date for SMR providers becoming CMRS providers does not deny SMR providers the benefits of regulatory parity. Rather, it prolongs the period in which they are subject to less burdensome regulation than their Part 22 counterparts. SMRs should not receive the competitive benefit of both less regulated status and a ban on cellular dispatch during the transition period. At a minimum, regulatory parity demands an immediate removal of the dispatch prohibition.

For the foregoing reasons, SCCC respectfully requests that the Federal Communications Commission deny AMTA's Request to the extent indicated herein.

Respectfully submitted,

SMALL CELLULAR CARRIER COALITION

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May 24, 1995

Certificat of Service

I, Caroline Hill, an employee of the Law Offices of Caressa D. Bennet, Certify that on this 24th day of May, 1995, I mailed by United States mail, postage prepaid, a copy of the foregoing "Opposition to the Request for Partial Reconsideration and for clarification to the following:

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